CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 27 SEPTEMBER 29, 1993 NO. 39

This issue contains:

AVAILABILITY OF BOUND VOLUMES
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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

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U.S. Customs Service

Treasury Decision

(T.D. 93–72)

EXTENSION OF SAYBOLT, INC., CUSTOMS GAUGER APPROVAL AND LABORATORY ACCREDITATIONS TO THE SITE LOCATED IN WILMINGTON, NORTH CAROLINA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Saybolt, Inc., Customs gauger approval and accreditations to include their Wilmington, North Carolina facility.

SUMMARY: Saybolt, Inc., of Kenilworth, New Jersey, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditations to include the Wilmington, North Carolina site. Specifically, the extension given to the Wilmington site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditations to perform the following laboratory analyses: API Gravity, sediment and water, water by distillation, sediment by extraction, distillation characteristics, Reid vapor pressure, Saybolt universal viscosity, percent weight of sulfur, xylene content of mixed xylenes and percent composition by weight of benzene, toulene and xylenes.

SUPPLEMENTARY INFORMATION:

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Saybolt, Inc., a Customs-approved commercial gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and certain laboratory accreditations to its Wilmington, North Carolina facility. Review of the qualifications of Saybolt, Inc., Wilmington site shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 (202–927–1060).

Dated: September 13, 1993.

JOHN B. O'LOUGHLIN,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, September 16, 1993 (58 FR 48539)]

U.S. Customs Service

General Notice

PROPOSED INTERPRETIVE RULE CONCERNING THE CLASSIFICATION OF PLASTIC-COATED FABRIC

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: The Customs Service is presently reviewing the classification of coated fabric within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Legal note 2(a)(1) to Chapter 59, HTSUSA, sets forth the governing standard by which coated fabric is classified, i.e., fabric will be classified as impregnated, coated, covered or laminated with plastics if that coating is visible to the naked eye with no account being taken of any resulting change in color.

DATE: Comments must be received on or before October 29, 1993.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, U.S. Customs Service, 1301 Constitution Avenue, N.W., Franklin Court, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Suzanne Karateew, Commercial Rulings Division, U.S. Customs Service, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Chapter 59 of the Tariff Schedule provides for impregnated, coated, covered or laminated textile fabrics. Chapter Note 2(a)(1) states that heading 5903 applies to fabric coated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than fabrics in which the coating cannot be seen with the naked eye, with no account being taken of any resulting change in color. Chapter Note 2(a)(3) to this section excludes products in which the textile fabric is coated or covered on both sides with plastic; such products are classifiable within Chapter 39 with the identical proviso that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color. For purposes of Chapter 39 and headings 5903 and 5907, HTSUSA, it is within Customs' discretion to examine fabric under magnification if, upon unaided

visual examination, there is the suggestion of the presence of plastic coating.

The sole criterion upon which Customs is to determine whether fabric is coated for purposes of classification within Chapter 39 or headings 5903 and 5907, HTSUSA, is as follows: fabric is coated if the plastic coating is visible to the naked eye. Customs has interpreted this standard to mean that the examiner is not allowed to take the "effects" of plastic into account. Plastic coating will often lend a sheen to fabric, result in a change of color, or increase a fabric's stiffness; these are factors which, while indicative of the presence of plastic, traditionally have not been taken into account by Customs in determining whether the plastic itself is visible to the naked eye. It should be noted that Legal Note 2 to Chapter 59 specifically prohibits the use of color as a visibility criterion.

We are of the opinion that the subjective nature of the test set forth in the Legal Notes to Chapter 59 may lead to inconsistency in the classification of plastic coated fabrics. We are now soliciting comments from the public with regard to methods which might be employed in determining whether textile fabrics are coated or covered with plastics for purposes of classification within Chapter 39, heading 5903 or heading 5907 of Section XI, HTSUSA.

COMMENTS

Before making a determination on this matter, Customs invites written comments from interested parties on this issue. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 FR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th St., N.W., suite 4000 West, Franklin Court Building, Washington, D.C.

Dated: September 21, 1993.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 93–174)

FEDERAL-MOGUL CORP., PLAINTIFF AND PLAINTIFF-INTERVENOR, AND TORRINGTON CO., PLAINTIFF AND PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN CORP., KOYO SEIKO CO., LTD., KOYO CORP. OF U.S.A., PEER BEARING CO., NSK LTD., NSK CORP., CATERPILLAR, INC., MINEBEA CO., LTD., AND NMB CORP., DEFENDANT-INTERVENORS

Consolidated Court No. 91–07–00530

(Dated September 3, 1993)

ORDER

TSOUCALAS, *Judge:* This case having been remanded to the Department of Commerce, International Trade Administration ("ITA"), pursuant to *Federal-Mogul Corp. v. United States*, 17 CIT ___, 822 F. Supp. 782 (1993), and the remand results having been filed with this Court on June 30, 1993 and an amendment to the remand results having been filed on August 6, 1993; it is hereby

ORDERED that the remand results filed with this Court on June 30, 1993 as amended on August 6, 1993 are hereby affirmed.

(Slip Op. 93–175)

TORRINGTON CO., PLAINTIFF, AND FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., AND SKF SVERIGE AB, DEFENDANT-INTERVENORS

Court No. 91–08–00566

Plaintiff challenges the following actions by the Department of Commerce, International Trade Administration ("ITA"), alleging that these actions were unsupported by substantial evidence on the administrative record and not in accordance with law: the ITA's (1) use of a methodology for adjusting United States price ("USP") and foreign market value ("FMV") for Sweden's value added tax ("VAT") that granted a circumstance of sale ("COS") adjustment to FMV to achieve tax neutrality; (2) method of calculating cash deposit rates for estimated duties; (3) in regard to exporter's sales price ("ESP") transactions, allowance of an adjustment to FMV for inventory carrying costs; (4) treatment of SKF USA Inc. and SKF Sverige AB's ("SKF") U.S. movement expenses; and (5) treatment of SKF's home market billing adjustments.

Held: This case is remanded to the ITA to add the full amount of VAT paid on each sale in the home market to FMV without adjustment. ITA's determination is affirmed in all other respects.

[Plaintiff's motion granted in part and denied in part; case remanded.]

(Dated September 8, 1993)

Stewart and Stewart (Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Geert De Prest, Margaret E. O. Edozien, Wesley K. Caine, Jimmy V. Reyna, Myron A. Brilliant, Robert A. Weaver, David Scott Nance and *Amy S. Dwyer)* for plaintiff The Torrington Company.

Frederick L. Ikenson, P.C. (Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V and *Larry Hampel)* for plaintiff-intervenor Federal-Mogul Corporation.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Velta A. Melnbrencis* and *Jane E. Meehan);* of counsel: *John D. McInerny,* Acting Deputy Chief Counsel for Import Administration, *Dean A. Pinkert* and *Stephen J. Claeys,* Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (Herbert C. Shelley, Scott A. Scheele, Alice A. Kipel, Juliana M. Cofrancesco and *Thomas J. Trendl)* for defendant-intervenors SKF USA Inc. and SKF Sverige AB.

OPINION

TSOUCALAS, *Judge:* Plaintiff, The Torrington Company ("Torrington"), commenced this action to challenge certain aspects of the Department of Commerce, International Trade Administration's ("ITA") final results in the first administrative review of imports of antifriction bearings from Sweden. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Sweden; Final Results of Antidumping Duty Administrative Reviews ("Final Results")*, 56 Fed. Reg. 31,762 (1991). Substantive issues raised by the parties in the underlying administrative proceeding were addressed by the ITA in the issues appendix to *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review ("Issues Appendix")*, 56 Fed. Reg. 31,692 (1991).

BACKGROUND

On June 11, 1990, the ITA initiated an administrative review of imports of ball bearings, cylindrical roller bearings and parts thereof from Sweden. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom Initiation of Antidumping Administrative Reviews,* 55 Fed. Reg. 23,575 (1990).

On March 15, 1991, the ITA published its preliminary determination in the administrative review. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Sweden; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 Fed. Reg. 11,193 (1991).

On July 11, 1991, the ITA published its Final Results in this proceeding. *Final Results,* 56 Fed. Reg. 31,762.

Torrington moves pursuant to Rule 56.1 of the Rules of this Court for summary judgment on the agency record alleging that the following actions by the ITA were unsupported by substantial evidence on the administrative record and not in accordance with law: the ITA's (1) use of a methodology for adjusting United States price ("USP") and foreign market value ("FMV") for Sweden's value added tax ("VAT") that granted a circumstance of sale ("COS") adjustment to FMV to achieve tax neutrality; (2) method of calculating cash deposit rates for estimated duties; (3) in regard to exporter's sales price ("ESP") transactions, allowance of an adjustment to FMV for inventory carrying costs; (4) treatment of SKF USA Inc. and SKF Sverige AB's ("SKF") U.S. movement expenses; and (5) treatment of SKF's home market billing adjustments. *Memorandum in Support of Plaintiff The Torrington Company's Motion for Judgment on the Agency Record ("Torrington's Memorandum")* at 6–35.

Discussion

This Court's jurisdiction over this matter is derived from 19 U.S.C. § 1516a(a)(2) (1988) and 28 U.S.C. § 1581(c) (1988).

A final determination by the ITA in an administrative proceeding will be sustained unless that determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence is "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *Alhambra Foundry Co. v. United States*, 12 CIT 343, 345, 685 F. Supp. 1252, 1255 (1988).

1. *Circumstance of Sale Adjustment to FMV for Value Added Tax:*

Torrington challenges the ITA's use of a methodology for adjusting USP and FMV for Sweden's VAT that granted a COS adjustment to FMV to achieve tax neutrality. *Torrington's Memorandum* at 13–16.

Defendant argues that its actions were supported by substantial evidence on the administrative record and otherwise in accordance with law. *Defendant's Memorandum in Opposition to Plaintiff's Motion for Judgment Upon the Agency Record ("Defendant's Memorandum")* at 10–37.

For a more detailed discussion of Torrington and defendant's arguments on this issue, see this Court's decision in *Torrington Co. v. United States*, 17 CIT ___, ___, 818 F. Supp. 1563, 1567–69 (1993).

SKF essentially agrees with the defendant's arguments on this issue. *Opposition of SKF USA Inc. and SKF Sverige AB to Torrington's Motion for Judgment on the Agency Record ("SKF's Opposition")* at 9–12.

This Court has fully addressed these arguments and adheres to its decision on this issue in *Federal-Mogul Corp. v. United States*, 17 CIT ___, ___, 813 F. Supp. 856, 863–65 (1993). This Court remands this issue to the ITA to allow the ITA to add the full amount of VAT paid on home market sales to FMV without adjustment.

2. *Calculation of Cash Deposit Rates:*

In this administrative review, the ITA used two different methodologies for the actual calculation of dumping margins in cases where ESP sales were used: one for assessing duties on entries covered by the review, and the other for setting the cash deposit rate on future entries of the subject merchandise. *Final Results*, 56 Fed. Reg at 31,764–65, *Issues Appendix*, 56 Fed. Reg. at 31,698–702. To calculate the assessment rate for ESP sales, the ITA "divide[d] the total PUDD [potential uncollected dumping duties – calculated as the total difference between foreign market value and U.S. price for an exporter] for the reviewed sales by the *total entered value* of those reviewed sales * * *." *Issues Appendix*, 56 Fed. Reg. at 31,698–99 (emphasis added). To calculate the estimated cash deposit rate for ESP sales, the ITA "divided the total PUDD for each exporter by the *total net U.S. Price* for that exporter's sales * * *." *Id.* at 31,699 (emphasis added).

Torrington argues that the ITA's use of a methodology which results in an estimated cash deposit rate different from the assessment duty rate was unsupported by substantial evidence on the record and not in accordance with law. *Torrington's Memorandum* at 30–35.

Defendant argues that its actions were supported by substantial evidence on the administrative record and otherwise in accordance with law. *Defendant's Memorandum* at 48–55. In addition, defendant argues that this issue is moot because of the publication of superseding cash deposit rates in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 Fed. Reg. 28,360 (1992). *Defendant's Memorandum* at 45–48.

For a more detailed discussion of Torrington and defendant's arguments on this issue, see this Court's decision in *Torrington Co.*, 17 CIT at ____, 818 F. Supp. at 1569.

SKF essentially agrees with the defendant's arguments on this issue. *SKF's Opposition* at 17–21.

The Court agrees with the defendant that this issue moot. However, the Court directs the defendant to this Court's decision on this issue in *Federal-Mogul*, 17 CIT at ____, 813 F. Supp. at 866–68.

3. *Inventory Carrying Costs:*

In the Final Results of this administrative review the ITA correctly adjusted ESP for imputed inventory carrying costs pursuant to 19 U.S.C. § 1677a(e)(2) (1988). Torrington does not challenge this adjustment.

Pursuant to its new administrative practice, the ITA also made a corresponding adjustment to FMV for imputed inventory carrying costs when comparing ESP sales to FMV sales.

Torrington objects to this adjustment by the ITA to FMV for imputed inventory carrying costs. *Torrington's Memorandum* at 6–12.

For a detailed discussion of Torrington and defendant's arguments on this issue, see this Court's decision in *Torrington Co.*, 17 CIT at ____, 818 F. Supp. at 1574–77.

SKF essentially agrees with the defendant's arguments on this issue. *SKF's Opposition* at 5–9.

This Court adheres to its decision on this issue in *Torrington Co.*, 17 CIT at ____, 818 F. Supp. at 1576–77, and finds that the ITA's adjustment to FMV for imputed inventory carrying costs pursuant to 19 C.F.R. § 353.56(b)(2) (1991) was a reasonable exercise of the ITA's discretion in implementing the antidumping duty statute and is affirmed.

4. *U.S. Movement Expenses:*

In the antidumping duty questionnaire sent to SKF, the ITA requested SKF to report all movement expenses associated with U.S. sales including ocean freight, marine insurance, U.S. inland freight and U.S. brokerage and handling. Administrative Record Sweden Public Document Number ("AR Swe. Pub. Doc. No.") 4. ITA requested that SKF report these expenses on a transaction-specific basis if possible. *Id.*

In its questionnaire response, SKF reported that it was unable to provide the requested information on a transaction-specific basis. AR Swe. Pub. Doc. No. 19. As an alternative, SKF calculated a monthly average for each type of expense. SKF took the total for each expense from eight chosen sample months and divided this total by the total weight shipped in those months. The result of these calculations were applied on a per-unit basis to all U.S. sales. *Id.*

During the course of the ITA's verification of SKF's U.S. sales response, the ITA successfully verified SKF's reporting methodology and calculation of U.S. movement expenses. Verification Report of SKF-USA at 5 (Supplemental Administrative Record Submission – August 26, 1993).

Torrington argues that the ITA abdicated its responsibility to make a determination of what would constitute a representative sample by simply accepting SKF's reporting methodology for U.S. movement expenses. *Torrington's Memorandum* at 20–21.

Torrington argues that 19 U.S.C. § 1677f–1(a)(1), (b) (1988), which authorizes the ITA to use generally recognized sampling techniques, requires that the ITA, not respondents, select any samples to be used in calculating dumping margins.[1] Torrington argues that the ITA did not

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[1] 19 U.S.C. § 1677f–1 states in pertinent part:

§ 1677f–1. Sampling and averaging

(a) In general

For the purpose of determining United States price or foreign market value under sections 1677a and 1677b of this title, and for purposes of carrying out annual reviews under section 1675 of this title, the administering authority may –

(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

* * * * * * *

(b) Selection of samples and averages

The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

select SKF's samples, SKF selected them itself. In addition, Torrington alleges that the ITA only verified SKF's calculations but not the underlying reporting methodology selected by SKF. *Torrington's Memorandum* at 22–24. Torrington argues that evidence on the administrative record does not support a finding that SKF's reporting methodology was representative of the transactions under review. *Id.*

Defendant argues that Torrington has failed to point to any evidence that the samples chosen by SKF, and verified and accepted by the ITA, were unrepresentative of SKF's U.S. movement expenses. Defendant argues that the ITA is granted broad discretion in its choice of verification methods and that the ITA verified SKF's reported U.S. movement charges. *PPG Indus. Inc. v. United States*, 15 CIT 615, 620, 781 F. Supp. 781, 787 (1991); *Kerr-McGee Chem. Corp. v. United States*, 14 CIT 344, 362, 739 F. Supp. 613, 628 (1990). Defendant argues that if the ITA is satisfied that the information submitted by SKF is complete and has been adequately verified, the ITA is under no obligation to obtain more information simply because Torrington is not satisfied with SKF's response. *Defendant's Memorandum* at 39–41.

SKF agrees with defendant's arguments on this issue and emphasizes that the ITA spent a substantial amount of time during the verification of SKF's U.S. sales response specifically verifying SKF's reported U.S. movement expenses and found no problems with SKF's submission. *SKF's Opposition* at 12–15. SKF also points out that it has been the ITA's administrative practice to accept allocation of expenses which cannot be reported on a transaction-specific basis where the reporting methodology was reasonable and the information submitted to the ITA was verified. *Id.* at 14.

It is obvious that a respondent is in the best position to know what kind of information can be generated by its recordkeeping system. It also follows that the respondent is also in the best position to suggest sampling methodologies to the ITA in situations where sampling is necessary due to the respondent's record-keeping system or the complexity of the proceeding.

While it is true that 19 U.S.C. § 1677f–1(b) grants the ITA sole authority to select samples, this Court finds nothing wrong with the ITA's acceptance of a respondent's proposed sampling methodology as long as that methodology is reasonable and, based on information in the administrative record, is likely to be representative of the underlying information. This is especially true in situations where the ITA was able to verify the information submitted. The key issue is that the ITA must closely examine the proposed methodology and make a determination that it is reasonable and representative. ITA cannot simply accept a respondent's methodology without investigation. As long as the ITA has made this determination, it is in compliance with 19 U.S.C. § 1677f–1.

In this case, the ITA was able to verify both SKF's reporting methodology and a randomly selected sample of its actual calculation of U.S. movement expenses. Torrington presents no evidence that the samples

proposed by SKF and accepted by the ITA were unrepresentative. Therefore, this Court affirms the ITA's acceptance of SKF's reporting methodology and calculations of U.S. movement expenses.

5. *Home Market Billing Adjustments:*

SKF reported credits or debits to home market invoices on a transaction-specific basis and claimed them as billing adjustments to FMV. AR Swe. Pub. Doc. No. 22. The ITA requested that SKF provide a more detailed explanation of why these billing adjustments were not rebates for which no adjustment to FMV should be made. AR Swe. Pub. Doc. No. 38. SKF responded that all reported billing adjustments were transaction-specific invoice corrections. AR Swe. Pub. Doc. No. 48.

ITA verified SKF's claimed billing adjustments and allowed an adjustment to FMV stating:

> On a line-item basis, as recorded on selected invoices, we verified the nature and accuracy of the billing adjustments claimed by all SKF companies. We have determined that these billing adjustments cannot be construed as rebates, because SKF did not know, prior to the sale, whether adjustments would be necessary, or in what amounts. Therefore, for these final results, we have continued to accept all sale-by-sale claims for billing adjustments and have added them to USP or FMV, where appropriate.

Issues Appendix, 56 Fed. Reg. at 31,726.

Torrington argues that information on the administrative record calls into question whether SKF's claimed billing adjustments were actually rebates for which no adjustment to FMV should be made. Torrington argues that it raised its concerns with the ITA during the course of the administrative review. Torrington acknowledges that the ITA verified SKF's billing adjustments, but claims that the verification conducted by the ITA was inadequate to resolve Torrington's outstanding concerns. *Torrington's Memorandum* at 25–29.

Torrington argues that *Smith Corona Group v. United States,* 15 CIT 355, 364–67, 771 F. Supp. 389, 397–400 (1991), stands for the proposition that the ITA's verification methodology must resolve all outstanding factual issues raised by an interested party. Torrington argues that the ITA's verification methodology of examining SKF's source documentation for selected transactions did not resolve the specific factual issues raised by Torrington in regard to SKF's billing adjustments. Therefore, Torrington requests this Court to remand this issue to the ITA to correctly verify SKF's billing adjustments or to have the ITA deny SKF an adjustment to FMV for its billing adjustments. *Torrington's Memorandum* at 29.

Defendant argues that Congress has afforded the ITA broad discretion in determining how to conduct verifications. *PPG Indus.,* 15 CIT at 620, 781 F. Supp. at 787; *Kerr-McGee,* 14 CIT at 362, 739 F. Supp. at 628; *Defendant's Memorandum* at 43.

During verification for this review, the ITA traced the amounts of SKF's billing adjustments for selected home market sales through SKF's source documents. ITA determined that these billing adjustments were not rebates because SKF did not know at the time of the sale whether a billing adjustment would be required for any given sale or the amount of such an adjustment if one was required. ITA found no discrepancies in SKF's reported billing adjustments. *Defendant's Memorandum* at 42–43.

In addition, defendant argues that Torrington's reliance on *Smith Corona,* 15 CIT at 364–67, 771 F. Supp. at 397–400, is misplaced because in that case the ITA made no attempt to verify the information questioned by the petitioner. In this case, the ITA fully verified SKF's billing adjustments and established their accuracy. *Defendant's Memorandum* at 44–45.

SKF agrees with defendant's arguments on this issue. *SKF's Opposition* at 15–17.

Torrington replies to defendant and SKF's arguments by arguing that post-sale price rebates not contemplated by a respondent at the time of sale are precisely the type of adjustments which are not proper adjustments to FMV. *Reply of The Torrington Company, Plaintiff, to Responses of Defendant and Defendant-Intervenors to Torrington's Motion for Judgment Pursuant to Rule 56.1* at 10–12.

This court has stated that "[t]he decision to select a particular [verification] methodology rests solely within Commerce's sound discretion. As long as there is 'substantial evidence on the record' to support the choice, the Court will sustain the methodology chosen by Commerce." *Hercules, Inc. v. United States,* 11 CIT 710, 726, 673 F. Supp. 454, 469 (1987). In addition, this court has stated that when the ITA finds a respondent's "information to be complete and its explanations sound, it may need no further information." *Kerr-McGee,* 14 CIT at 362, 739 F. Supp. at 628.

In this case, the Court has examined the confidential administrative record and the ITA's verification reports and finds that there is more than sufficient evidence to support the ITA's verification methodology in regard to SKF's billing adjustments and the accuracy of those reported adjustments. The administrative record supports the ITA's conclusion that these billing adjustments were not rebates. AR Swe. Confidential Doc. Nos. 18, 26; AR Swe. Pub. Doc. No. 57. Torrington's reliance on *Smith Corona,* 15 CIT at 364–67, 771 F. Supp. at 397–400, is misplaced because in this case the ITA fully verified the information it relied upon. Therefore, the ITA's adjustment of FMV for SKF's reported home market billing adjustments is affirmed.

CONCLUSION

In accordance with the foregoing opinion, this case is remanded to the ITA to add the full amount of VAT paid on each sale in the home market to FMV without adjustment. ITA's determination is affirmed in all

other respects. Remand results are due within thirty (30) days of the date this opinion is entered. Any comments or responses by the parties to the remand results are due within thirty (30) days thereafter. Any rebuttal comments are due within fifteen (15) days of the date responses or comments are due.

(Slip Op. 93–176)

KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 91–07–00495

Plaintiffs move pursuant to Rule 56.1 of the Rules of this Court for judgment on the agency record. Plaintiffs specifically object to the Department of commerce, International Trade Administration's ("Commerce") (1) failure to average U.S. price in the same manner as it averaged foreign market value; (2) decision to reclassify plaintiffs' home market post-sale price adjustments, rebates and warranty expenses as indirect selling expenses; (3) use of "best information available" in place of plaintiffs' calculation of home market credit expenses; (4) rejection of Koyo's separate home market selling expenses incurred by its related distributors on the sales they made; and (5) rejection of Koyo's cost of production information.

Held: Plaintiffs' motion is granted in part and this case is remanded to Commerce to (1) request additional information from Koyo in order to make a more accurate determination of Koyo's credit expenses; (2) determine whether the cost of production figures submitted by Koyo are properly adjusted for material cost variance; and (3) allocate Koyo's indirect selling expenses to specific sales. Plaintiffs' motion is denied in all other respects.

[Plaintiffs' motion granted in part and denied in part; case remanded.]

(Dated September 9, 1993)

Powell, Goldstein, Frazer, & Murphy (Peter O. Suchman, Susan P. Strommer, Niall P. Meagher, D. Christine Wood, Susan E. Silver, Elizabeth C. Hafner and *Susan M. Mathews)* for plaintiffs.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen*, Director, Commercial litigation Branch, Civil Division, U.S. Department of Justice *(Michael S. Kane);* of counsel: *Joan L. MacKenzie* and *Stephen Claeys*, Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Stewart and Stewart (Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., John M. Breen, Margaret E.O. Edozien and *Lane S. Hurewitz)*, for defendant-intervenor The Timken Company.

OPINION

TSOUCALAS, *Judge:* Plaintiffs, Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. ("Koyo"), move pursuant to Rule 56.1 of the Rules of this Court for judgment on the agency record contesting the Department of Commerce, International Trade Administration's ("Commerce") final results in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan; Final Results of*

Antidumping Duty Administrative Review ("Final Results"), 56 Fed. Reg. 26,054 (1991). Plaintiffs specifically object to Commerce's (1) failure to average U.S. price in the same manner as it averaged foreign market value; (2) decision to reclassify plaintiffs' home market post-sale price adjustments, rebates and warranty expenses as indirect selling expenses; (3) use of "best information available" in place of plaintiffs' calculation of home market credit expenses; (4) rejection of Koyo's separate home market selling expenses incurred by its related distributors on the sales they made; and (5) rejection of Koyo's cost of production information.

On December 13, 1990, Commerce published the preliminary results of its administrative review of tapered roller bearings ("TRBs") covering the period from August 1, 1987 through July 31, 1988. *Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review*, 55 Fed. Reg. 51,308 (1990). On June 6, 1991, Commerce published the final results of its administrative review, which are the subject of this action. *Final Results*, 56 Fed. Reg. 26,054.

Discussion

In reviewing a final determination of Commerce, this Court must uphold that determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence has been defined as being "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). It is "not within the Court's domain either to weigh the adequate quality or quantity of the evidence for sufficiency or to reject a finding on grounds of a differing interpretation of the record." *Timken Co. v. United States*, 12 CIT 955, 962, 699 F. Supp. 300, 306 (1988), *aff'd*, 894 F.2d 385 (Fed. Cir. 1990).

1. *Averaging of U.S. Prices:*

In its administrative review, Commerce compared individual U.S. sales prices of TRBs with an annualized, weighted-average foreign market value. Koyo claims that Commerce's failure to average U.S. price in the same manner as it averaged foreign market value was an abuse of discretion and now asks the Court to remand this case to Commerce with instructions to average U.S. price and foreign market value on the same basis.

According to 19 U.S.C. § 1677f–1 (1988 & Supp. 1993):

> For the purpose of determining United States price or foreign market value under sections 1677a and 1677b of this title, and for purposes of carrying out annual reviews under section 1675 of this title, the administering authority may –

> (1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and
> (2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.
>
> **(b) Selection of samples and averages**
>
> The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

Thus, the statute states that Commerce may use averaging techniques "whenever a significant volume of sales is involved or a significant number of adjustments to prices is required." *Id.* Furthermore, the statute grants Commerce exclusive authority to do so as long as the averaging is representative. *Id.*

In the case at hand, before applying averaging techniques to foreign market value, commerce conducted two studies to insure that the transactions and the results produced would be representative. *Final Results,* 56 Fed. Reg. at 26,057. Commerce stated:

> First, we compared the monthly weighted-average price to the annual weighted-average price. We found that the annual weighted-average price for more than 90 percent of the products sold came within 10 percent of the monthly weighted-average price. Second, we tested whether home market prices of the subject merchandise consistently rose or fell during the period of review. We found that no significant correlation existed between price and time. That is, prices did not consistently rise or fall so as to make annual weighted-average prices unrepresentative of home market prices. Therefore, the results of these tests demonstrate that Koyo's pricing practices remained stable during the review period, thus insuring that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV.

Id.

Thus, Commerce's decision to average foreign market value was reasonable and representative. Koyo asserts it "has no objection *per se* to the use of annualized weighted-average foreign market values" but that since Commerce did so it also should have averaged U.S. price. *See Plaintiffs' Motion for Judgment on the Agency Record ("Plaintiffs' Motion")* at 10 n.3. The statute, however, gives no indication that commerce must average both sides of the equation. In fact, commerce stated in its Final Results that:

> An average U.S. price has been, and continues to be, unacceptable, because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. * * * Except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability * * *, the idea of averaging U.S. prices has been rejected. Since the merchandise under review is not a

perishable product, there is no reason to believe that averaging of U.S. prices is needed to take into account very significant price fluctuations.

Id. at 26,057–58.

These same issues were presented in *Koyo Seiko Co., Ltd. v. United States,* 17 CIT ____, Slip Op. 93–87 (June 1, 1993), where this Court upheld Commerce's use of the annualized weighted-average technique only for foreign market value and not for U.S. price. The Court finds no difference between the two cases and thus concludes that Commerce was justified in not averaging U.S. prices. The determination of Commerce as to this issue is hereby affirmed.

2. *Indirect Selling Expenses:*

Koyo also contests Commerce's treatment of Koyo's post-sale price adjustments, rebates and warranties as indirect selling expenses rather than directly adjusting foreign market value for these adjustments.

Koyo claims that the Department erred in the Final Results by including its home market rebates in the pool of home market indirect selling expenses rather than adjusting home market price directly. Koyo feels that since price adjustments are revisions or corrections to price, not circumstances of sale adjustments (which are generally based on elements of cost—i.e., advertising, technical services and commissions), the adjustments should be directly applied to the home market sales price rather than treated as indirect selling expenses. *Plaintiffs' Motion* at 15.

The Court of Appeals for the Federal Circuit has stated on this issue that in order for a discount or rebate to qualify as a direct cost to be subtracted from FMV, the discount or rebate must have been actually paid on all of the sales under consideration and allocated on the basis of actual cost and sales figures. *Smith-Corona Group v. United States,* 713 F.2d 1568, 1580 (Fed. Cir. 1983), *cert. denied,* 465 U.S. 1022 (1984). In *Koyo Seiko Co. v. United States,* 16 CIT ____, ____, 796 F. Supp. 1526, 1530 (1992), this Court upheld Commerce's treatment of Koyo's post-sale price adjustments as indirect selling expenses because these post-sale price adjustments could not be directly correlated with sales of the subject merchandise using verified cost and sales information. This Court is of the same opinion in the case at hand.

Furthermore, subsequent to the filing of briefs in this case, at an oral argument held on April 22, 1993 in a similar case, counsel for Koyo stated that it had changed its position and conceded this issue. *See Koyo Seiko,* 17 CIT at ____, Slip Op. 93–87 at 5. Therefore, Commerce's decision to treat Koyo's post-sale price adjustments, rebates and warranties as indirect selling expenses is affirmed.

3. *Home Market Credit Calculation:*

Koyo claims that Commerce ignored Koyo's calculations of home market credit expenses and instead used the best information available when it computed indirect selling expenses. In the Final Results, Commerce rejected two aspects of Koyo's credit expense calculation. First,

Koyo calculated an average number of days from its top twenty customers by averaging the minimum and maximum number of days that each of these customers' payments remained outstanding. Commerce, however, determined that an average based upon only two transactions would not be representative of actual payment experience since each customer engaged in numerous transactions during the review period. *Final Results,* 56 Fed. Reg. at 26,058.

Commerce now concedes that resort to BIA was improper because Koyo was not given sufficient opportunity to correct its deficient responses. Commerce also concedes to a remand on this issue so that Commerce may request additional information from Koyo in order to make a more accurate determination of Koyo's credit expenses. Therefore, this case is remanded to Commerce so that it may request additional information from Koyo.

4. *Indirect Selling Expenses by Related Distributors:*

Koyo also claims that Commerce improperly rejected its calculation of indirect selling expenses in the home market. Koyo reported sales by its related distributors to its customers rather than by Koyo's sales to the distributors. Commerce subsequently aggregated the indirect selling expenses and then allocated the total across all of Koyo's sales. Commerce now concedes that it should have allocated the indirect selling expenses to specific sales and, therefore, agrees that this issue should be remanded to Commerce for that purpose.

5. *Cost of Production Calculations:*

Finally, Koyo claims that Commerce improperly rejected its cost of production calculations, claiming that Commerce adjusted Koyo's figures only for material cost variance and not for the manufacturing cost variance. Koyo further asserts that its questionnaire responses show that Koyo did include a variance allowance for both material cost and manufacturing. *Plaintiffs' Motion* at 24–25.

Upon reexamining this issue, Commerce concedes that it should have afforded Koyo an opportunity to clarify its questionnaire responses and agrees that this issue should be remanded so that it may request additional information for that purpose.

Conclusion

In accordance with the foregoing opinion, plaintiffs' motion for judgment on the agency record is granted in part and this case is remanded to Commerce to (1) request additional information from Koyo in order to make a more accurate determination of Koyo's credit expenses; (2) determine whether the cost of production figures submitted by Koyo are properly adjusted for material cost variance; and (3) allocate Koyo's indirect selling expenses to specific sales. Plaintiffs' motion is denied in all other respects. Remand results are to be filed within sixty days (60) of the date this opinion is entered. Comments to Remand results are to be filed within thirty (30) days thereafter, and responses to comments are to be filed within fifteen (15) days of the date comments are filed.

(Slip Op. 93–177)

PUBLIC VERSION

FORMER EMPLOYEES OF HEWLETT-PACKARD CO., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 92–02–00072

[Remand determination affirmed. Action dismissed.]

(Dated September 9, 1993)

Edward P. Van Pelt, pro se, for plaintiffs.

Stuart E. Schiffer, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, *(Jeffrey M. Telep), Yvonne Senning,* of counsel, United States Department of Labor, for defendant.

MEMORANDUM AND ORDER

GOLDBERG, *Judge:* Plaintiffs, former employees of the Hewlett-Packard Company located in Rockaway, New Jersey challenge the determination of the Secretary of Labor ("Labor") that they are ineligible for trade adjustment assistance under 19 U.S.C. § 2272(a)(1) (1988). *Koh-l-Noor Rapidograph, et al.,* 56 Fed. Reg. 58711 (Dep't Labor 1991) (negative eligibility determination); *Hewlett-Packard Co., Rockaway, N.J.,* 56 Fed. Reg. 67103 (Dep't Labor 1991) (application for reconsideration dismissal).

Pursuant to a court ordered remand, *Former Employees of Hewlett Packard Co. v. United States,* No. 93–8 (CIT Jan. 21, 1993), Labor reinvestigated the allegations made by plaintiffs in order to determine if the certification requirements under 19 U.S.C. § 2272 (1988) were met. Based on its findings, Labor issued a determination denying certification for trade adjustment assistance. *Hewlett-Packard Co., Rockaway, N.J.* 58 Fed. Reg. 28,614 (Dep't Labor 1993) (negative reconsideration determination).

Plaintiffs request that Labor's negative determination be reversed, and that the court order Labor to grant their petition for eligibility for trade adjustment assistance. Labor opposes the motion and requests that its determination be affirmed and that the court enter a judgment dismissing the action.

This court has jurisdiction pursuant to 19 U.S.C. § 2395 (1988) and 28 U.S.C. § 1581(d)(1) (1988).

After considering the papers submitted herein, relevant case law as well as the administrative record, the court holds that Labor's determination is based on substantial evidence in the record and is in accordance with the law. The remand results submitted by Labor are therefore affirmed, and the action is dismissed.

BACKGROUND

On October 2, 1991, Mr. Edward P. Van Pelt, a former employee of Hewlett-Packard's Rockaway, New Jersey plant, filed a petition with Labor for certification for trade adjustment assistance ("TAA") benefits

pursuant to 19 U.S.C. § 2271 (1988) on behalf of thirty-four former employees of the Rockaway plant. The plant produced computer programmable power supplies for electronic equipment. The petitioning workers were all from the metal fabrication shops of the Rockaway plant. Workers in these shops produced chassis and hardware components of the equipment manufactured by the plant. According to the petition, the anticipated date of separation of the workers was January 31, 1992.

Labor initiated an investigation with regard to the petition. On October 17, 1991, Labor requested data from Hewlett-Packard for its investigation. Hewlett-Packard responded by letter dated November 1, 1991 and indicated that Hewlett-Packard had not involuntarily terminated any employees. Hewlett-Packard therefore requested that further participation by it be excused.

Based upon the results of its investigation, Labor issued its determination on November 8, 1991, denying the petition for worker certification. Labor stated that criterion (1) of section 222 of the Trade Act of 1974, 19 U.S.C. § 2272(a)(1) (1988), was not satisfied because Hewlett-Packard had not separated workers at the Rockaway plant.

On November 26, 1991, Mr. Van Pelt requested administrative reconsideration of Labor's denial of TAA certification, arguing that Labor's decision had not properly taken into account that the jobs of the employees who took the voluntary severance package were eliminated, and that no jobs at comparable skill levels or pay were available within the company. Labor dismissed the application for lack of sufficient evidence pursuant to 19 U.S.C. § 2272(a)(1) (1988). This dismissal constituted a final determination for purposes of judicial review.

Petitioner filed for judicial review on February 5, 1992, within 60 days from the date Labor's decision was published in the Federal Register.

On January 21, 1993, this court issued an order reversing Labor's determination that the plaintiffs were not "separated" within the meaning of the statute and remanded the case to Labor to complete its investigation. Upon remand, Labor was instructed to determine whether Hewlett-Packard's sales and production had declined and whether an increase in imports contributed importantly to plaintiffs' separation and any decline in sales or production. *Former Employees of Hewlett Packard Co. v. United States*, No. 93–8 (CIT Jan. 21, 1993).

Based on the court's remand decision, Labor subsequently conducted a supplemental investigation. The investigation produced the following information which constituted the basis for Labor's findings upon reconsideration of plaintiffs' petition.

According to Hewlett-Packard's response to Labor's questionnaire issued during the investigation, [.] Supplemental Confidential Record ("Supp. Confidential Record") at 2; Supp. Confidential Record at 4. Hewlett-Packard stated that [.] Supp. Confidential Record at 3; Supp. Confidential Record at 5. Hewlett-

Packard also [.] Supp. Confidential Record at 8. Finally, [.] Supp. Confidential Record at 10.

Labor then contacted [.] Supp. Confidential Record at 11–12.

Next, Labor obtained [.] Supp. Confidential Record at 13. [.] Supp. Confidential Record at 14. [.] Supp. Confidential Record at 15. Finally, [.] Supp. Confidential Record at 16.

Based upon the evidence obtained in the investigation, Labor issued its final remand determination, which stated:

> Findings on reconsideration show that the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974 was not met * * *. The company did not import power supply components. Company officials stated that the Metal Fab[rication] Shop was closed because it was cost effective for Hewlett-Packard to outsource the production of component parts formerly made by the Metal Fab[rication] Shop to local outside domestic vendors.
>
> Findings on reconsideration show that the outside vendors for component parts for power supplies did not import any of the metal parts sold to Hewlett-Packard. The findings show that the metal fabrication parts produced by Hewlett Packard's suppliers are entirely of U.S. origin.

Supp. Record at 17–18.

On May 6, 1993, Labor issued its remand determination, again denying plaintiffs eligibility for certification for trade adjustment assistance. *Hewlett-Packard Co., Rockaway, N.J.*, 58 Fed. Reg. 28,614 (Dep't Labor 1993) (negative determination on reconsideration).

Standard of Review

A negative determination by Labor denying certification of eligibility for TAA benefits will be upheld if it has been made in accordance with the law, and is supported by substantial evidence contained in the administrative record. *See Woodrum v. Donovan*, 5 CIT 191, 193, 564 F. Supp. 826, 828 (1983), *aff'd sub nom. Woodrum v. United States*, 2 Fed. Cir. (T) 82, 737 F.2d 1575 (1984); 19 U.S.C. § 2395(c) (1988). "Substantial evidence has been held to be more than a 'mere scintilla,' but sufficient evidence to reasonably support a conclusion." *Former Employees of General Elec. Corp. v. U.S. Dep't Labor*, 14 CIT 608, 610 (1990) (citations omitted).

Discussion

Pursuant to 19 U.S.C. § 2272(a) (1988), the following eligibility requirements must be met in order to qualify for TAA certification:

> (a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this part if he determines –
>
> (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm

> have become totally or partially separated, or threatened to become totally or partially separated,
>
> (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

19 U.S.C. § 2272(a) (1988). "Contributed importantly" is defined as "a cause which is important but not necessarily more important than any other cause." 19 U.S.C. § 2272(b)(1) (1988).

In its determination, Labor concluded that the third criterion above had not been satisfied. Labor found that no increases in imports of articles like or directly competitive with articles produced at the Hewlett-Packard plant contributed importantly to plaintiffs' separations.

Plaintiffs claim that Labor improperly determined that increased imports did not cause Hewlett-Packard to close the metal fabrication shops and separate workers. 19 U.S.C. § 2272(a)(3) (1988). Plaintiffs do not contest Labor's factual findings that increased imports of like or directly competitive articles were not substituted for articles produced at the plant. Instead, plaintiffs assert that Hewlett-Packard's decision to cease production was a result of indirect competition from foreign manufacturers and imported electronic equipment generally as well as the impact of indirect competition from imported power supplies. This lead to declining profits and revenues at the Rockaway plant forcing the company to cut costs to maintain market shares. Plaintiffs' Memorandum at 1. Plaintiffs' essential argument is thus that the statutory requirement that imports contributed importantly to a decline in sales or production and to a decline in employment, construed correctly, includes both direct and indirect import competition.

Defendant claims that Labor properly determined that increased imports did not cause the workers' separation. Defendant argues that 19 U.S.C. § 2272(a)(3) (1988) requires that there is an increase of imports of a like or directly competitive article with the articles produced at the Hewlett-Packard plant. Moreover, the affected firm's decrease in sales or production and employment must be caused directly by import substitution. Defendant thus argues for a narrow construction of the statute.

Specifically, defendant argues that the record demonstrates that [.] In addition, the record demonstrates that [.] [.] Supp. Confidential Record at 10–13. Labor obtained additional evidence supporting this conclusion. [.] Supp. Confidential Record at 14–16.

The court first examines whether Labor's investigation in the instant case was adequate to obtain the necessary information upon which to make a determination. In doing so, the court recalls that Labor possesses considerable discretion in its handling of TAA investigations.

Yet, a threshold requirement of reasonable inquiry exists, and investigations that fall below this threshold cannot constitute substantial evidence upon which a determination can be affirmed. "In this regard, courts have observed that 'because of the *ex-parte* nature of the certification process, and the remedial purpose of the trade adjustment assistance program, the Secretary is obliged to conduct his investigation with the utmost regard for the interests of the petitioning workers.'" *Stidham v. U.S. Dep't Labor,* 11 CIT 548, 551, 669 F. Supp. 432 (1987) (citations omitted). Where Labor conducts an inadequate investigation by failing to make a reasonable inquiry, the court has good cause to remand the case to Labor to take further evidence pursuant to 19 U.S.C. § 2395(b) (1988).

In the case at bar, the court finds that plaintiffs have not offered any justification for disregarding Labor's customer survey as a reasonable and proper means of assessing the impact of imports on Hewlett-Packard. As noted, the investigation revealed that the customers surveyed accounted for nearly all of the decline in sales to United States non-military buyers. Labor correctly refrained from surveying foreign customers, since, as asserted by defendant, only imports into the United States are relevant for purposes of the statute. Labor also properly refrained from surveying United States military customers since, as argued by defendant, these governmental entities are statutorily obligated to purchase products manufactured in the United States. *See* 41 U.S.C. §§ 10a and 10b (1988). Defendant's Memorandum at 9. Thus, based on these facts, it was not improper for Labor to survey only three customers. Accordingly, the court must defer to Labor's choice of methodology.

Next, the court will examine plaintiffs' argument that the causal nexus between increased imports and job loss was of such a nature as to meet the statutory requirements of 19 U.S.C. § 2272(a)(3) (1988).

In evaluating the validity of plaintiffs' claim, the court notes that Congress was concerned that the Trade Act's TAA provisions not become "a general program of unemployment assistance. The Secretary was required to find an important causal nexus between imports and separation. The meaning of 'important' is not susceptible to any simple definition and Congress did not try to articulate one. As with many governmental programs, Congress looked to the administrator to develop * * * the [meaning of the] standard * * *." *United Glass & Ceramic Workers v. Marshall,* 584 F.2d 398, 407 (1978).

Accordingly, the court must, in the instant case, review Labor's denial of certification to determine if Labor acted arbitrarily, whether this manifests itself in deviations from an ascertainable legislative mandate, unexplained rigidity in the exercise of the agency's interpretative function or inconsistency in actual application. "But a court must afford the agency substantial deference in dealing with complex and diverse applications under an admittedly vague mandate." *Id.*

The standard set out in 19 U.S.C. § 2272(a)(3) (1988) has over the years been interpreted by Labor in a uniform and consistent manner, an interpretation that has been affirmed by this court on many occasions. Under this interpretation, trade adjustment assistance is authorized for workers if it can be established that an important causal nexus exists between increased imports of like or directly competitive articles, declines in sales or production and the workers' separation from employment. *Abbott v. Donovan*, 6 CIT 92, 101, 570 F. Supp. 41 (1983). "The term 'contributed importantly' refers to the causal nexus, and suggests a direct and substantial relationship between increased imports and the decline in sales and production." *Retail Clerks Int'l Union, Local 149F v. Donovan,* 10 CIT 308, 311 (1986) (citing *Estate of Finkel v. Donovan,* 9 CIT 374, 382, 614 F. Supp. 1245 (1985)).

Consequently, the court must determine whether Labor incorrectly found that the requisite direct and substantial relationship does not exist in the case at bar. A review of the agency record leaves the court unpersuaded by plaintiffs' argument. First, as demonstrated above, there was no increase in like or directly competitive articles. Next, the effect of declining revenue due to imports, whether of general electronic equipment or of power supplies, on Hewlett-Packard's work force, sales, and production of metal chassis does not constitute the important causal nexus required by the statute as it has consistently been interpreted by Labor and by this court.

In prior cases, this court has rejected the claim that the requisite relationship between imports and job loss exists where the employer's decision to down size is based on falling revenue due to a general decline in prices caused by increased imports. In *Former Employees of CSX Oil & Gas Corp. v. U.S. Dep't Labor,* 13 CIT 645, 720 F. Supp. 1002 (1989), the court affirmed Labor's denial of certification of workers for TAA when the employer's revenue declined due to a world-wide oversupply of crude oil even though its sales of crude oil and natural gas increased. In its decision affirming Labor's determination, the court stated that:

> [w]hile plaintiffs' job loss may well have been "caused," in a purely economic or lay sense, by cheap crude oil imports, the trade adjustment assistance law was not intended by Congress to provide assistance to all workers who lose their jobs due in some measure to imports. *Id* at 650.

Based on the above, the court determines that Labor was within its discretion when it determined that the causal nexus required by the TAA statute was not satisfied by the general presence of imported electronic equipment or power supplies in the market.

Finally, plaintiffs assert that Hewlett-Packard's actual reason for closing the operation was not increased imports, but a desire to cut costs associated with health care and other benefits. Plaintiff's Memorandum at 2. Relevant case law has consistently held that the TAA statute does not apply when a company closes because economic factors make continued operations impractical rather than due to direct import competi-

tion. "'While it is [also] true that the assistance provisions are to be construed liberally * * * the parameters of [the statute] cannot be ignored. The benefits of the Act are not universal and some hardship may result.'" *Former Employees of CSX Oil & Gas Corp. v. U.S. Dep't Labor*, 13 CIT 645, 650, 720 F. Supp. 1002 (19893 (quoting *Pemberton v. Marshall*, 639 F.2d 798, 800 (D.C. Cir. 1981)). The court sympathizes with the unfortunate and difficult circumstances plaintiffs' job loss may have imposed upon them, but the court is bound to apply the statute as intended by Congress.

Accordingly, Labor's negative determination is sustained.

CONCLUSION

After a thorough review of the record, the contentions of the parties, and the applicable law, the court concludes that Labor's determination that former employees of the Hewlett-Packard, Rockaway, New Jersey plant were not separated due to increased imports, and therefore are not qualified for TAA under 19 U.S.C. § 2272(a) (1988), is supported by substantial evidence in the record, and is in accordance with the law.

Consequently, Labor's negative determination denying eligibility for certification is affirmed, and plaintiffs' action is dismissed.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C93/97 8/30/93 DiCarlo, J.	A.T. Clayton and Co., Inc.	90–05–00234	4809.20.20	4809.20.40 Free of duty 4816.20.00 3% etc.	Agreed statement of facts	Philadelphia Giroform CF and/or Giroform CFB greater than 36 cm (360 mm) in width, etc.
C93/98 9/1/93 Goldberg, J.	Volume Footwear	92–05–00306	6402.99.70 90¢/pr. + 37.5%	6402.99.15 6%	Agreed statement of facts	Los Angeles Footwear, style numbers 8941 and 9941
C93/99 9/3/93 Aquilino, J.	Daewoo International (America) Corp.	90–12–00705	6201.93.3520 (jackets) 29.5% 6203.43.4020 (trousers) 29.7%	6211.33.0030 (trousers) 17% 6211.33.0035 (other [jackets]) 17%	Agreed statement of facts	Los Angeles Men's and boy's track suits of manmade fibers, lined
C93/100 9/3/93 Aquilino, J.	Daewoo International (America) Corp.	91–04–00246	6201.93.3520 (jackets) 29.5% 6203.43.4020 (trousers) 29.7%	6211.33.0030 (trousers) 17% 6211.33.0035 (other [jackets]) 17%	Agreed statement of facts	Los Angeles Men's and boy's track suits of manmade fibers, lined
C93/101 9/3/93 Aquilino, J.	Daewoo International (America) Corp.	92–02–00114	6201.93.3520 (jackets) 29.5% 6203.43.4020 (trousers) 29.7%	6211.33.0030 (trousers) 17% 6211.33.0035 (other [jackets]) 17%	Agreed statement of facts	Los Angeles Men's and boy's track suits of manmade fibers, lined
C93/102 9/3/93 Goldberg, J.	Daewoo International (America) Corp.	92–08–00528	6201.93.3520 (jackets) 29.5% 6203.43.4020 (trousers) 29.7%	6211.33.0030 (trousers) 17% 6211.33.0035 (other [jackets]) 17%	Agreed statement of facts	Los Angeles Men's and boy's track suits of manmade fibers, lined

ABSTRACTED CLASSIFICATION DECISIONS–continued

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C93/103 9/9/93 DiCarlo, J.	Domtar, Inc.	92–11–00753	4802.52.10.00	4802.52.90.00	Agreed statement of facts	Derby-line, Norton, Highgate, VT Windsor Wove and other types of paper
C93/104 9/9/93 DiCarlo, J.	Italusa Corp.	92–02–00078	2002.10.0050 9903.23.17 100%	2002.90.0050 13.6%	Agreed statement of facts	San Juan Pomi Fresh Tomato Finely Chopped

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V93/13 9/1/93 Goldberg, J.	Kinney Service Corporation	92–02–00071	Not stated	Entered values and any additional duties	Nunn Bush Shoe Co. *v.* United States 784 F. Supp. 892 (CIT 1992)	New York Footwear
V93/14 9/3/93 Goldberg, J.	Caressa, Inc.	92–01–00060	Not stated	Entered values and any additional duties	Nunn Bush Shoe Co. *v.* United States 784 F. Supp. 892 (CIT 1992)	JFK Footwear
V93/15 9/3/93 Musgrave, J.	Nissho-Iwai American Corp.	87–08–00884, etc.	Transaction value	$377,608.20 per vehicle 84–321565–4 and $368,352.06 per vehicle 85–254366–3	Agreed statement of facts	New York R–62 self-propelled subway car vehicles
V93/16 9/9/93 DiCarlo, J.	Allen's of San Juan	93–01–00045	Not stated	Entered values and any additional duties	Nunn Bush Shoe Co. *v.* United States 784 F. Supp. 892 (CIT 1992)	San Juan Non-rubber footwear imported from Spain

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